

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
OCT 28 2002
ROBERT H. SHEMWEEL, CLERK
BY PH DEPUTY

JOHN ABRUSLY : DOCKET NO. 2:02cv0196
VS. : JUDGE TRIMBLE
MERCK & CO., INC., ET AL. : MAGISTRATE JUDGE WILSON

JUDGMENT OF DISMISSAL

On June 18, 2002, the assigned magistrate judge issued a report and recommendation finding that defendant, John Doe, was fictitious, and thus his citizenship should be disregarded for purposes of removal. (*See*, June 18, 2002, Report and Recommendation; 28 U.S.C. 1441). The magistrate judge further found that even if John Doe were treated as a named, non-diverse defendant, plaintiff had no possibility of recovery against the individual represented by John Doe. *Id.* We also note that this matter has been pending for over nine months, and there is no return of service as to defendant, John Doe.¹ Fed.R.Civ.P. 4(m). On July 23, 2002, the court adopted the magistrate judge's report and recommendation. (*See*, July 23, 2002, Judgment).

Under these circumstances, the court finds that the dismissal of John Doe is appropriate. Accordingly,

IT IS ORDERED that plaintiff, JOHN ABRUSLEY's claims against defendant, JOHN DOE, be, and they are hereby DISMISSED, without prejudice.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 28th day of October, 2002.

[Signature]
JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE

¹ Obviously, as a fictitious party, John Doe cannot be served.

JUDGMENT ENTERED

BY Kathleen Monahan

COPY Andy
McCall
Cohen
JTT RB
JB

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